

SANDERS LAW GROUP

Renee Aragona, Esq.
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Tel: (516) 203-7600
Email: raragona@sanderslaw.group
File No.: 123804

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Steven Hirsch,

Plaintiff,

v.

The Philadelphia Inquirer, LLC
formerly known as Philadelphia Media
Network,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Steven Hirsch (“*Plaintiff*”), by and through its undersigned counsel, for its Complaint against Defendant The Philadelphia Inquirer, LLC formerly known as Philadelphia Media Network (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein creates photographic images and owns the rights to these images which Plaintiff licenses for various uses including online and print publications.
3. Defendant owns and/or operates a website known as www.inquirer.com, formerly www.philly.com (the “*Website*”).
4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct

1 knowingly and in violation of the United States copyright laws.

2 **PARTIES**

3 5. Plaintiff Steven Hirsch is an individual who is a citizen of the State of New York
4 and maintains a principal place of business at 280 E. 10th Street in New York City, New York.

5 6. Upon information and belief, Defendant is a Delaware limited liability company
6 with a principal place of business at 801 Market Street in Philadelphia, Pennsylvania and is
7 liable and responsible to Plaintiff based on the facts herein alleged.

8 **JURISDICTION AND VENUE**

9 7. This Court has subject matter jurisdiction over the federal copyright
10 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

11 8. This Court has personal jurisdiction over Defendant because it maintains its
12 principal place of business in Pennsylvania.

13 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Defendant does business
14 in this Judicial District and/or because a substantial part of the events or omissions giving rise
15 to the claim occurred in this Judicial District.

16 **FACTS COMMON TO ALL CLAIMS**

17 10. Plaintiff is a professional photographer by trade who is the legal and rightful
18 owner of photographs which Plaintiff licenses to online and print publications.

19 11. Plaintiff has invested significant time and money in building Plaintiff's
20 photograph portfolio.

21 12. Plaintiff has obtained active and valid copyright registrations from the United
22 States Copyright Office (the "*USCO*") which cover many of Plaintiff's photographs while many
23 others are the subject of pending copyright applications.

24 13. Plaintiff's photographs are original, creative works in which Plaintiff owns
25 protectable copyright interests.

26 14. Upon information and belief, Defendant is the owner of the Website and is
27 responsible for its content.
28

1 15. Upon information and belief, Defendant is the operator of the Website and is
2 responsible for its content.

3 16. The Website is a popular and lucrative commercial enterprise.

4 17. The Website is monetized in that it contains paid advertisements and, upon
5 information and belief, Defendant profits from these activities.

6 18. The Website is monetized in that it sells merchandise as well as paid
7 subscriptions to the public and, upon information and belief, Defendant profits from these
8 activities.

9 19. On August 23, 2018, Plaintiff Steven Hirsch authored a photograph of model
10 Christina Carlin Kraft (the "*Photograph*"). A copy of the Photograph is attached hereto as
11 Exhibit 1.

12 20. Plaintiff applied to the USCO to register the Photograph on or about September
13 21, 2018 under Application No. 1-6751988314.

14 21. The Photograph was registered by the USCO on September 21, 2018 under
15 Registration No. VA 2-120-576.

16 22. On May 9, 2019, Plaintiff observed the Photograph on the Website in a story
17 dated October 5, 2018. A copy of the screengrab of the Website including the Photograph is
18 attached hereto as Exhibit 2.

19 23. The Photograph was displayed at URL:
20 [https://www.philly.com/philly/news/pennsylvania/christina-carlin-kraft-murder-drug-cocaine-](https://www.philly.com/philly/news/pennsylvania/christina-carlin-kraft-murder-drug-cocaine-jonathan-harris-ardmore-pennsylvania-20181005.html)
21 [jonathan-harris-ardmore-pennsylvania-20181005.html](https://www.philly.com/philly/news/pennsylvania/christina-carlin-kraft-murder-drug-cocaine-jonathan-harris-ardmore-pennsylvania-20181005.html).

22 24. The Photograph was stored at URL:
23 https://www.philly.com/resizer/IycSLRLnQgupHiT_hMAqjGvy9qo=/1400x0/center/middle/a
24 [rc-anglerfish-arc2-prod-](https://www.philly.com/resizer/IycSLRLnQgupHiT_hMAqjGvy9qo=/1400x0/center/middle/a)
25 [pmn.s3.amazonaws.com/public/R363FJ7JUZEYVI2GDKL4RMNBPM.jpg](https://www.philly.com/resizer/IycSLRLnQgupHiT_hMAqjGvy9qo=/1400x0/center/middle/a).

26 25. Without permission or authorization from Plaintiff, Defendant volitionally
27 selected, copied, stored and/or displayed Plaintiff's copyright protected Photograph as is set
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1 forth in Exhibit 1 on the Website.

2 26. Upon information and belief, the Photograph was copied, stored and displayed
3 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
4 "*Infringement*").

5 27. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed
6 tangible medium of expression that was sufficiently permanent or stable to permit it to be
7 communicated for a period of more than a transitory duration and therefore constitutes a specific
8 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160
9 (9th Cir. 2007).,

10 28. The Infringement is an exact copy of the entirety of Plaintiff's original image
11 that was directly copied and stored by Defendant on the Website.

12 29. Upon information and belief, Defendant takes an active and pervasive role in the
13 content posted on its Website, including, but not limited to copying, posting, selecting,
14 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

15 30. Upon information and belief, Defendant directly contributes to the content
16 posted on the Website by, inter alia, directly employing reporters, authors and editors as its
17 agents, including but not limited to Vinny Vella whose LinkedIn page lists him as a "Staff
18 Writer" at The Philadelphia Inquirer ("*Employees*").

19 31. Upon information and belief, at all material times the Employees were acting
20 within the course and scope of their employment when they posted the Infringement.

21 32. Upon information and belief, at all material times the Employees were acting
22 within the course and scope of their agency when they posted the Infringement.

23 33. Upon information and belief, the Photograph was willfully and volitionally
24 posted to the Website by Defendant.

25 34. Upon information and belief, Defendant is not registered with the United States
26 Copyright Office pursuant to 17 U.S.C. §512.

27 35. Upon information and belief, Defendant engaged in the Infringement knowingly
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1 and in violation of applicable United States Copyright Laws.

2 36. Upon information and belief, Defendant has a reasonable knowledge of
3 applicable United States Copyright Laws as the Defendant outlines the process for reporting
4 copyright violations on the Website in their “Terms and Conditions.”

5 37. Upon information and belief, Defendant has the legal right and ability to control
6 and limit the infringing activities on its Website and exercised and/or had the right and ability
7 to exercise such right.

8 38. Upon information and belief, Defendant monitors the content on its Website.

9 39. Upon information and belief, Defendant has received a financial benefit directly
10 attributable to the Infringement.

11 40. Upon information and belief, the Infringement increased traffic to the Website
12 and, in turn, caused Defendant to realize an increase in the revenue generated via its advertising,
13 subscription services, and/or merchandise sales.

14 41. Upon information and belief, a large number of people have viewed the unlawful
15 copies of the Photograph on the Website.

16 42. Upon information and belief, Defendant at all times had the ability to stop the
17 reproduction and display of Plaintiff's copyrighted material.

18 43. Defendant's use of the Photograph, if widespread, would harm Plaintiff's
19 potential market for the Photograph.

20 44. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

21 **FIRST COUNT**

22 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

23 45. Plaintiff repeats and incorporates by reference the allegations contained in the
24 preceding paragraphs, as though set forth in full herein.

25 46. The Photograph is an original, creative work in which Plaintiff owns a valid
26 copyright properly registered with the United States Copyright Office.

27 47. Plaintiff has not licensed Defendant the right to use the Photograph in any
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1 manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

2 48. Without permission or authorization from Plaintiff and in willful violation of
3 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
4 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff
5 thereby violating one of Plaintiff's exclusive rights in its copyrights.

6 49. Defendant's reproduction of the Photograph and display of the Photograph
7 constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service*
8 *Co., Inc.*, 499 U.S. 340, 361 (1991).

9 50. Plaintiff is informed and believes and thereon alleges that the Defendant
10 willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S.
11 Code, in that they used, published, communicated, posted, publicized, and otherwise held out
12 to the public for commercial benefit, the original and unique Photograph of the Plaintiff without
13 Plaintiff's consent or authority, by using it in the infringing article on the Website.

14 51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
15 entitled to an award of actual damages and disgorgement of all of Defendant's profits
16 attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or,
17 in the alternative, at Plaintiff's election, an award for statutory damages against Defendant in
18 an amount up to \$150,000.00 for the infringement pursuant to 17 U.S.C. § 504(c).

19 52. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court
20 in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and
21 costs pursuant to 17 U.S.C. § 505 from Defendant.

22 53. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
23 entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17
24 U.S.C. § 502.

25 **JURY DEMAND**

26 54. Plaintiff hereby demands a trial of this action by jury.

27 **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed upon Plaintiff's rights to the Photograph in violation of 17 U.S.C. § 501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant in an amount up to \$150,000.00 for the infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: February 3, 2022

SANDERS LAW GROUP

By: /s/ Renee Aragona
Renee Aragona, Esq.
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Tel: (516) 203-7600
Email: raragona@sanderslaw.group
File No.: 123804

Attorneys for Plaintiff